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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,151	04/09/2001	Alan Young	47185-95330	8242

7590 07/12/2005

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EXAMINER

NGUYEN, TAN D

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/829,151

**Applicant(s)**

YOUNG, ALAN

**Examiner**

Tan Dean D. Nguyen

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE of 5/6/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/2/05 has been entered.

***Response to Amendment***

The amendment filed 5/2/05 has been entered.

***Claim Rejections - 35 USC § 101***

***35 U.S.C. 101 reads as follows:***

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**2. Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

In order for the claimed invention to be statutory subject matter, the claimed invention must fall within one of the statutory classes of invention as set forth in § 101 (i.e. a process, machine, manufacture, or composition of matter).

In the present case, Method claim 1 is directed to a "method for reporting a value of a key performance indicator", which is not within one of the classes of invention set forth in § 101.

The “method for reporting a value of a key performance indicator” comprising the steps of:

- (a) identifying a key performance indicator (KPI),
- (b) indentifying at least one business event associated with the (KPI)
- (c ) receiving a business event message ... ,
- (d) determine the value of the (KPI) based on the business data, and
- (e) displaying the determined value of the (KPI) via a contextual visulization interface”,

are merely an abstract idea and do not produce a useful, tangible, concrete results.

The “method for reporting a (KPI)” comprising the steps of (a)-(e) as shown are merely an abstract idea and does not reduce to a practical application in the technological arts (integration with computer or equivalence for carrying out a determination/calculation step) and are therefore are found to be non-statutory.

See (1) *In re Schrader*, 22 F .3d 290, 30 USPQ2d 1455 (CCPA 1994), (2) *In re Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1557, (3) *In re Waldbaum*, 173 USPQ 430 (CCPA 1972), (4) *In re Musgrave*, 167 USPQ 280 (CCPA 1970), and (5) *In re Johnston*, 183 USPQ 172.

***Response to Arguments***

3. Applicant's arguments with respect to the 35 U.S.C. 101 rejections filed 5/2/05 have been fully considered but they are not persuasive because the claims fail to reduce to a practical application in the technological arts and are therefore are found to be non-statutory.

***Claim Rejections - 35 USC § 112***

4. Claims 1-7, 9, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 9 and 10, it's not clear how the step of "determine the value of the key performance indicator based on the business data" is carried out or how the value is obtained since "based on the business data" and related to the previous step with respect to "occurrence" is not clear and definite.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**7. Claims 1-7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over COOK (US Patent 6,546,378).**

**As for independent method claim 1**, COOK discloses a method for reporting (or displaying) a value of a key performance indicator (prediction), comprising:

- a) identifying a key performance indicator (or KPI) (prediction);
  - b) identifying at least one business event associated with the KPI (prediction);
  - c) receiving a business event message (data) indicating the occurrence of the business event and describing the business event;
  - d) determining the value of the KPI (prediction) based on the business data; and
  - e) displaying the determined value of the KPI (prediction) via a contextual visualization interface (monitor/screen display) {see example 3 on cols. 39-40, example 11 on col. 45 and Fig. 1 (12, 24, 44) for monitoring displaying screen or monitor}.
- COOK fairly teaches the claimed invention except for some relationship between the occurrence of the event and the message (data). However, on step 7 on col. 40 (or similar teachings on step 8 on col. 46), COOK fairly teaches the determination of different maps to predicted different features of IBM stock for different periods into the future using different collections of market measures and by analyzing wave packets of different lengths, therefore, it would have been obvious to a skilled artisan in the data analysis and management to link business event message indicating the occurrence of

the business event to the determination of the value of the prediction if desired, as fairly taught in COOK above.

As for dep. claims 2-6 (part of 1), which deals with well known data event parameters, i.e. different type of event features such as reference, change, threshold event, task completion or failure, etc., these are non-essential to the scope of the claimed invention which is "data analysis and management" and are fairly taught in example 12, col. 46, "... *relationship between different types of events*".

As for dep. claim 7 (part of 1), which further limits the KPI, a prediction and the determining step using a predictive logic, these are taught in Examples 3 or 11 above and col. 13, lines 1-5.

**As for independent apparatus claims 9 and 10,** which are merely system/apparatus to carry out the method of claim 1 above, they are rejected over the system/apparatus to carry out the method of claim 1 as rejected above and further in view of Fig. 1 or col. 10, lines 27-67.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See US Patent 5,889,993; 5,832,467; US 2001/0001149 and 2003/0055759 for similar teachings with respect to data analysis and management including the step of calculating a predicting value or future value (future trend) based on historical data.

No claims are allowed.

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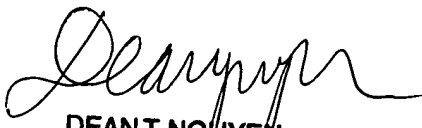
9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss may be reached at (571) 272-6812. The FAX phone numbers for formal communications concerning this application are (703) 872-9306. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn  
July 9, 2005

  
DEAN T. NGUYEN  
PRIMARY EXAMINER